

## SENATE BILL No. 408

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-11-2; IC 13-23.

**Synopsis:** Underground storage tanks. Repeals: (1) the underground storage tank guaranty fund; and (2) the underground storage tank loan guaranty and grant programs. Makes conforming amendments. Allows: (1) persons designated by eligible tank owners and operators; and (2) subsequent owners of the property upon which tanks are located if the tanks were previously owned by eligible tank owners and operators; to receive money from the excess liability trust fund under certain circumstances. Requires the underground petroleum storage tank financial assurance board to adopt rules to determine eligibility to receive money from the fund for tank owners or operators that acquire ownership or operation of a tank as a result of an inheritance. Prohibits a tank owner or operator from receiving more than \$4,000,000 from the excess liability trust fund during a year. Makes other changes to the law concerning the excess liability trust fund. Imposes a civil penalty on an owner of a tank who fails to pay the tank registration fee of not more than \$2,000 per tank for each year that passes after the fee becomes due and before the fee is paid.

**Effective:** June 1, 2001; July 1, 2001.

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January 18, 2001, read first time and referred to Committee on Environmental Affairs.

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Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## SENATE BILL No. 408

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 13-11-2-16 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 16. (a) "Authority", for  
3 purposes of IC 13-22-10, refers to the Indiana hazardous waste facility  
4 site approval authority.

5 (b) "Authority", for purposes of IC 13-19-5, ~~and IC 13-23-10~~, refers  
6 to the Indiana development finance authority created under IC 4-4-11.

7 SECTION 2. IC 13-11-2-87, AS AMENDED BY P.L.132-1999,  
8 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
9 JULY 1, 2001]: Sec. 87. (a) "Fund", for purposes of IC 13-14-12, refers  
10 to the environmental management special fund.

11 (b) "Fund", for purposes of IC 13-15-10, refers to the waste facility  
12 operator trust fund.

13 (c) "Fund", for purposes of IC 13-15-11, refers to the environmental  
14 management permit operation fund.

15 (d) "Fund", for purposes of IC 13-17-6, refers to the asbestos trust  
16 fund.

17 (e) "Fund", for purposes of IC 13-17-8, refers to the Title V

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operating permit program trust fund.

(f) "Fund", for purposes of IC 13-17-14, refers to the lead trust fund.

(g) "Fund", for purposes of IC 13-18-8-5, refers to a sanitary fund.

(h) "Fund", for purposes of IC 13-18-13, refers to the wastewater revolving loan fund established by IC 13-18-13-2.

(i) "Fund", for purposes of IC 13-18-21, refers to the drinking water revolving loan fund established by IC 13-18-21-2. The term does not include the supplemental fund established by IC 13-18-21-22.

(j) "Fund", for purposes of IC 13-19-5, refers to the environmental remediation revolving loan fund established by IC 13-19-5-2.

(k) "Fund", for purposes of IC 13-20-4, refers to the municipal waste transportation fund.

(l) "Fund", for purposes of IC 13-20-13, refers to the waste tire management fund.

(m) "Fund", for purposes of IC 13-20-22, refers to the state solid waste management fund.

(n) "Fund", for purposes of IC 13-21-7, refers to the waste management district bond fund.

(o) "Fund", for purposes of IC 13-21-13-2, refers to a district solid waste management fund.

(p) "Fund", for purposes of IC 13-23-6, refers to the underground petroleum storage tank trust fund.

(q) "Fund", for purposes of IC 13-23-7, refers to the underground petroleum storage tank excess liability fund.

~~(r) "Fund", for purposes of IC 13-23-10, refers to the underground storage tank guaranty fund.~~

~~(s)~~ (r) "Fund", for purposes of IC 13-25-4, refers to the hazardous substances response trust fund.

~~(t)~~ (s) "Fund", for purposes of IC 13-25-5, refers to the voluntary remediation fund.

~~(u)~~ (t) "Fund", for purposes of IC 13-28-2, refers to the voluntary compliance fund.

SECTION 3. IC 13-23-7-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. The underground petroleum storage tank excess liability trust fund is established for the following purposes:

(1) Assisting owners and operators of underground petroleum storage tanks to establish evidence of financial responsibility as required under IC 13-23-4. ~~and 42 U.S.C. 6991b(c)(6).~~

(2) Providing a source of money to satisfy liabilities incurred by owners and operators of underground petroleum storage tanks under IC 13-23-13-8 ~~and 42 U.S.C. 6991b(h)(6)~~ for corrective

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~~(3) Providing a source of money for a loan guaranty under IC 13-23-10.~~

~~(4)~~ **(3)** Providing a source of money for the indemnification of third parties under IC 13-23-9-3.

~~(5)~~ **(4)** Providing a source of money to pay for the expenses of the department incurred in paying and administering claims against the trust fund. Money may be provided under this subdivision only for those job activities and expenses that consist exclusively of administering the excess liability trust fund.

SECTION 4. IC 13-23-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. The expenses of administering the provisions of this article that are funded by the trust fund, including:

(1) IC 13-23-8;

(2) IC 13-23-9;

~~(3) IC 13-23-10;~~

~~(4)~~ **(3)** IC 13-23-11; and

~~(5)~~ **(4)** IC 13-23-12;

shall be paid from money in the fund.

SECTION 5. IC 13-23-8-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 1. The department, ~~with respect to subdivisions (1) and (3); and the Indiana development finance authority; with respect to subdivision (2);~~ under rules adopted by the financial assurance board under IC 4-22-2, shall use money in the excess liability trust fund, to the extent that money is available in the excess liability fund, for the following:

(1) The payment of a part of the costs allowed under IC 13-23-9-2 involved in the liability of owners and operators of underground petroleum storage tanks, **persons designated by eligible owners and operators, and subsequent owners of the property upon which tanks are located if the tanks were previously owned by eligible owners and operators,** excluding:

(A) liabilities to third parties; and

(B) the costs of repairing or replacing an underground storage tank;

arising out of releases of petroleum.

~~(2) Providing loan guaranties under IC 13-23-10.~~

~~(3)~~ **(2)** Providing payment of part of the liability of owners and operators of underground petroleum storage tanks:

(A) to third parties under IC 13-23-9-3; or

(B) for reasonable attorney's fees incurred in defense of a third

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1 party liability claim.

2 SECTION 6. IC 13-23-8-2 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 2. Except as provided  
4 in section 6 of this chapter, the part of the liability of an owner or  
5 operator of an underground petroleum storage tank that may be paid  
6 under ~~section 1(1) or 1(3)~~ **section 1** of this chapter is determined in  
7 STEP TWO of the following formula:

8 STEP ONE: If the total amount of the liability exceeds one  
9 million dollars (\$1,000,000), subtract the amount by which the  
10 liability exceeds one million dollars (\$1,000,000) from the total  
11 amount of the liability.

12 STEP TWO: If STEP ONE is used, subtract the amount specified  
13 under section 3 of this chapter from the remainder under STEP  
14 ONE. If STEP ONE is not used, subtract the amount specified  
15 under section 3 of this chapter from the total amount of the  
16 liability.

17 SECTION 7. IC 13-23-8-3 IS AMENDED TO READ AS  
18 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. For the purposes of  
19 section 2 of this chapter, the following amounts shall be used:

20 (1) If the underground petroleum storage tank that is involved in  
21 the event for which a claim is made:

22 (A) is not in compliance with

23 ~~(i) regulations adopted by the United States Environmental~~  
24 ~~Protection Agency;~~

25 ~~(ii) rules adopted by the board and~~

26 ~~(iii) rules adopted by the fire prevention and building safety~~  
27 ~~commission;~~

28 **the underground storage tank financial assurance board**  
29 concerning technical and safety requirements relating to the  
30 physical characteristics of underground petroleum storage  
31 tanks before the date the tank is required to be in compliance  
32 with the requirements; and

33 (B) is in compliance on a date required under the requirements  
34 described under section 4 of this chapter at the time a release  
35 was discovered;

36 the amount is thirty-five thousand dollars (\$35,000).

37 (2) If the underground petroleum storage tank that is involved in  
38 the event for which a claim is made:

39 (A) is in compliance with

40 ~~(i) regulations adopted by the United States Environmental~~  
41 ~~Protection Agency;~~

42 ~~(ii) rules adopted by the board and~~

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(iii) ~~rules adopted by the fire prevention and building safety commission;~~

**the underground storage tank financial assurance board** concerning technical and safety requirements relating to the physical characteristics of underground petroleum storage tanks before the date the tank is required to be in compliance with the requirements; and

(B) is not a double walled underground petroleum storage tank with piping that has secondary containment;

the amount is thirty thousand dollars (\$30,000).

(3) If the underground petroleum storage tank that was involved in the event for which a claim is made:

(A) is in compliance with

(i) ~~regulations adopted by the United States Environmental Protection Agency;~~

(ii) rules adopted by the board and

(iii) ~~rules adopted by the fire prevention and building safety commission;~~

**the underground storage tank financial assurance board** concerning technical and safety requirements relating to the physical characteristics of underground petroleum storage tanks before the date the tank is required to be in compliance with the requirements; and

(B) is a double walled underground petroleum storage tank with piping that has secondary containment;

the amount is twenty-five thousand dollars (\$25,000).

SECTION 8. IC 13-23-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4. (a) Except as provided under subsection (b), and subject to section 4.5 of this chapter, an owner or operator, **a person designated by an eligible owner or operator, and a subsequent owner of the property upon which a tank is located if the tank was previously owned by an eligible owner or operator** may receive money from the excess liability fund under ~~section 1(1) or 1(3)~~ **section 1** of this chapter only if the owner or operator is in substantial compliance (as defined in 328 IAC 1-1-9) with the following requirements:

(1) The owner or operator has complied with the following:

(A) This article or IC 13-7-20 (before its repeal).

(B) Rules adopted under this article or IC 13-7-20 (before its repeal).

~~(C) 42 U.S.C. 6991 through 6991i.~~

~~(D) Regulations adopted under 42 U.S.C. 6991 through 6991i.~~

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A release from an underground petroleum storage tank may not prevent an owner or operator from establishing compliance with this subdivision to receive money from the excess liability fund.

(2) The owner or operator has paid all registration fees that are required under rules adopted under IC 13-23-8-4.5.

(3) The owner or operator has provided the commissioner with evidence of payment of the amount of liability the owner or operator is required to pay under section 2 of this chapter.

~~(4) The owner or operator has not defaulted on a loan guaranteed under IC 13-23-10 or IC 13-7-20-33.3 (before its repeal).~~

(5) (4) A corrective action plan is approved by the commissioner or deemed approved under this subdivision. The corrective action plan for sites with a release from an underground petroleum storage tank that impacts soil or groundwater, or both, is automatically deemed approved only as long as:

(A) the owner or operator, or an agent of the owner or operator, conforms with:

(i) the department's initial site investigation report guidelines, including an investigation that completely defines the horizontal and vertical extent of any soil and groundwater contamination; 329 IAC 9-4 and 329 IAC 9-5; and

(ii) the department's cleanup guidelines set forth in the Underground Storage Tank Branch Guidance Manual; including the department's risk-based corrective action plan standards when the standards become effective; and

(B) the soil and groundwater contamination is confined to the owner's or operator's property.

If the corrective action plan fails to satisfy any of the requirements of clause (A) or (B), the plan is automatically deemed disapproved. If a plan is disapproved, an owner or operator may supplement the corrective action plan. The corrective action plan is automatically deemed approved when the cause for the disapproval is corrected. For purposes of this subdivision, in the event of a conflict between compliance with an owner's or operator's corrective action plan and the department's cleanup guidelines or standards in clause (A), the department's cleanup guidelines or standards control. The department may audit any corrective action plan. If the commissioner denies the plan, a detailed explanation of all the deficiencies of the plan must be provided with the denial.

(b) An owner or operator is eligible to receive money from the fund

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before the owner or operator has a corrective action plan approved or deemed approved if:

(1) the work for which payment is sought under IC 13-23-9-2 was an immediate removal in response to a petroleum release that created the need for emergency action to abate an immediate threat of harm to human health, property, or the environment;

(2) the work is for a site characterization completed in accordance with ~~the Underground Storage Tank Branch Guidance Manual;~~ **329 IAC 9-5-5.1**; or

(3) the department has not acted upon a corrective action plan submitted under IC 13-23-9-2 within ninety (90) days after the date the department receives the:

(A) plan; or

(B) application to the fund;

whichever is later.

(c) The amount of money an owner or operator is eligible to receive from the fund under subsection (b) must be calculated in accordance with 328 IAC 1-3.

SECTION 9. IC 13-23-8-4.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 4.5. The financial assurance board shall adopt rules under IC 4-22-2 ~~and IC 13-7-7.1 not later than October 1, 1997:~~ **to do the following:**

(1) To establish standards, procedures, and penalties for submitting or resubmitting a claim under ~~IC 13-23-8-1(1) or IC 13-23-8-1(3)~~ **section 1 of this chapter** when the owner or operator has failed to:

(A) register an underground petroleum storage tank from which a release has occurred; or

(B) pay all registration fees that are due under ~~section 32 of this chapter~~ **IC 13-23-12-1** by the date the fees are due.

(2) To determine eligibility for new owners or operators that acquire ownership or operation of the underground petroleum storage tank as a result of:

(A) a bona fide, good faith transaction, negotiated at arm's length, between parties under separate ownership and control;

(B) a foreclosure or a deed transferred in lieu of a foreclosure; ~~or~~

(C) the exercise of the person's lien rights; **or**

**(D) an inheritance.**

~~The rules adopted under this subsection must take effect not later than October 1, 1997.~~

SECTION 10. IC 13-23-8-6 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. (a) If the balance in the excess liability fund is insufficient to pay:

- (1) claims under this chapter;
- (2) transfers to the underground storage tank guaranty fund necessary to maintain reserve fund levels commensurate with the aggregate principal amount of outstanding loan guaranties as specified by the Indiana development finance authority;
- (3) (2) necessary personnel and administrative expenses associated with the excess liability fund; and
- (4) (3) the transfer repayment specified in IC 13-23-15-3;

the department shall cease paying claims. and the Indiana development finance authority shall cease processing loan guaranty applications:

(b) The department shall then notify each owner or operator that:

- (1) the department may not pay the owner's or operator's claim; and
- (2) the owner or operator may not use the excess liability fund to satisfy any financial assurance requirements under federal law.

SECTION 11. IC 13-23-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. (a) The

- (1) department, with respect to payment of claims under section 1(1) or 1(3) of this chapter; and
- (2) Indiana development finance authority; with respect to providing loan guaranties under section 1(2) of this chapter,

may not discriminate against any owner or operator of an underground petroleum storage tank. However, subject to this chapter, an owner or operator of an underground petroleum storage tank does not have an enforceable right to the payment of a claim under this chapter. or a loan guaranty under IC 13-23-10.

(b) This chapter does not create any obligation on the part of the state other than as specifically provided in this article.

SECTION 12. IC 13-23-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 8. An owner or operator of:

- (1) not more than one hundred (100) underground petroleum storage tanks may not receive more than one four million dollars (\$1,000,000) (\$4,000,000) from the excess liability trust fund during a year. and
- (2) more than one hundred (100) underground storage tanks may not receive more than two million dollars (\$2,000,000) from the excess liability trust fund during a year.

SECTION 13. IC 13-23-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 3. (a) To receive money

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from the excess liability trust fund under ~~IC 13-23-8-1(3)~~,  
**IC 13-23-8-1(2)**, an owner or operator must:

- (1) submit to the administrator a request for indemnification of a third party containing any information required by the administrator; and
- (2) forward a copy of the request under subdivision (1) to the attorney general for the attorney general's approval.

(b) The attorney general shall approve a request submitted under subsection (a) if the attorney general determines that there is:

- (1) a legally enforceable and final judgment against the owner or operator caused by a release of petroleum that was not entered as a result of:
  - (A) fraud;
  - (B) negligence; or
  - (C) an inadequate defense on the part of the attorney of the owner or operator; or
- (2) a reasonable settlement between the owner or operator and the third party.

(c) If the attorney general approves a request under subsection (b), the administrator shall approve the request if the owner or operator is in compliance with the requirements of this article and the rules adopted under this article.

(d) The attorney general shall approve or deny a request submitted under this section not later than sixty (60) days after the attorney general receives the request.

(e) Not later than seven (7) days after the attorney general has approved a request under this section, the attorney general shall forward a copy of the approved request to the auditor of state.

(f) Not later than thirty (30) days after receiving an approved request under this section, the auditor of state shall pay to the owner or operator who made the request the approved amount from money available in the excess liability trust fund.

(g) If the attorney general denies a request submitted under this section, the attorney general shall notify the owner or operator that made the request of the denial not later than ten (10) days after the request has been denied.

SECTION 14. IC 13-23-11-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. (a) The board shall do the following:

- (1) Adopt rules under IC 4-22-2 and IC 13-14-9 necessary to carry out the duties of the board under this article.
- (2) Take testimony and receive a written report at every meeting



of the board from the commissioner or the commissioner's designee regarding the financial condition and operation of the excess liability trust fund including:

(A) a detailed breakdown of contractual and administrative expenses the department is claiming from the excess liability trust fund under ~~IC 13-23-7-1(5)~~; **IC 13-23-7-1(4)**; and

(B) a claims statistics report consisting of the status and value of each claim submitted to the fund and claims payments made under IC 13-23-8-1.

The testimony and written report under this subdivision shall be provided at every meeting of the board. However, the testimony and written report are not required more than one (1) time during any thirty (30) day period.

(3) Consult with the department on administration of the underground petroleum storage tank excess liability trust fund established by IC 13-23-7-1 in developing uniform policies and procedures for revenue collection and claims administration of the fund.

(b) The department shall consult with the board on administration of the underground petroleum storage tank excess liability trust fund. The consultation must include evaluation of alternative means of administering the fund in a cost effective and efficient manner.

(c) At each meeting of the board, the department shall provide the board with a written report on the financial condition and operation of the underground petroleum storage tank trust fund established under IC 13-23-6-1.

SECTION 15. IC 13-23-12-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. (a) An owner of an underground storage tank who:

- (1) is required to pay the fee under section 1 of this chapter; and
- (2) fails to pay the fee when due as established under section 2 of this chapter;

shall be assessed a penalty of not more than ~~fifty two thousand~~ **(\$50) (\$2,000)** dollars per underground storage tank for each ~~day~~ **year** that passes after the fee becomes due and before the fee is paid.

(b) Except as provided in subsection (c), each penalty assessed under this section and collected from the owner of an underground petroleum storage tank shall be deposited as follows:

- (1) Fifty percent (50%) shall be deposited in the petroleum trust fund.
- (2) Fifty percent (50%) shall be deposited in the excess liability trust fund.

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1 (c) Penalties assessed under this section and collected from owners  
2 of underground storage tanks used to contain regulated substances  
3 other than petroleum shall be deposited in the hazardous substances  
4 response trust fund.

5 (d) The penalty set forth in this section is in addition to the penalties  
6 that may be imposed under the following:

7 (1) IC 13-23-14-2.

8 (2) IC 13-23-14-3.

9 (3) IC 13-23-14-4.

10 (4) IC 13-30-4.

11 (5) IC 13-30-5.

12 (6) IC 13-30-6.

13 (7) IC 13-30-8.

14 SECTION 16. THE FOLLOWING ARE REPEALED [EFFECTIVE  
15 JULY 1, 2001]: IC 13-11-2-22; IC 13-23-10.

16 SECTION 17. [EFFECTIVE JUNE 1, 2001] (a) **Any money in the**  
17 **underground storage tank guaranty fund established in**  
18 **IC 13-23-10, as repealed by this act, on June 29, 2001, shall be**  
19 **transferred to the state general fund on June 30, 2001.**

20 (b) **This SECTION expires July 1, 2001.**

21 SECTION 18. **An emergency is declared for this act.**

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